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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,480	10/24/2003	Stephen Johnson	75144-011600	1911
33717	7590	07/03/2007	EXAMINER	
GREENBERG TRAURIG LLP (LA)			NGUYEN, KIM T	
2450 COLORADO AVENUE, SUITE 400E			ART UNIT	PAPER NUMBER
INTELLECTUAL PROPERTY DEPARTMENT			3714	
SANTA MONICA, CA 90404				
MAIL DATE		DELIVERY MODE		
07/03/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/692,480	JOHNSON, STEPHEN
	Examiner Kim T. Nguyen	Art Unit 3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 April 2007.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 26-36 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-25 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 October 2003 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

### **DETAILED ACTION**

The amendment filed on 4/9/07 has been entered. By this amendment, claims 26-36 have been added, and claims 1-36 are now pending in the application.

#### **Election/Restrictions**

1. Newly submitted claims 26-36 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims 26-36 are directed to relating the probability of winning a further prize to the size of a wager which is distinct from the originally claimed claims 1-25 that direct to relating the probability of winning a further prize to an initial prize value.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 26-36 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

#### **Claim Rejections - 35 USC § 103**

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**3. Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baerlocher et al (U.S. Patent No. 6,406,369) in view of Vancura (U.S. Patent No. 6,409,172).**

Claims 1-2: Baerlocher discloses a gaming machine having a display and a game controller arranged to control images of symbols displayed on the display (Fig. 1), the game controller is arranged to play a game wherein at least one random event is caused to be displayed on the display and, if a predefined winning event occurs, the gaming machine awards a prize (col. 5, lines 40-48; and col. 6, lines 20-27), the gaming machine includes a determining module for determining whether or not at least one further prize, following an award of an initial prize (col. 16, lines 66-67), is to be awarded (col. 6, lines 28-43). Baerlocher does not explicitly disclose using the value of that initial prize in determining the probability of the player successfully winning the further prize. However, Baerlocher discloses that the probability of success decreases in accordance with the increase of the multipliers (col. 3, lines 51-57; col. 8, lines 25-40; and col. 13, lines 61-63), and the value of a prize is determined by multiplying the player's bet by the bonus multiplier at the position achieved by the player (col. 11, lines 30-33; and col. 12, lines 19-21), Baerlocher obviously discloses determining the probability of the player successfully winning a further prize using the value of an initial prize in order to increase excitement of the game. Vancura, further, discloses relating a probability of landing on each position to the prize value of each position so that a predetermined game return is maintained in the casino (col. 2, lines 36-39; col. 3, lines 29-49; col. 4, lines 46-49; col. 7, lines 33-38). It would have been

obvious to a person of ordinary skill in the art at the time the invention was made to incorporate determining the probability of the player successfully winning a further prize using the value of a prize of Vancura to the gaming machine of Baerlocher in order to provide an expected return to the player.

Claim 3: Baerlocher discloses the prize won is in the form of a number of credits (col. 12, lines 19-23). Further, determining a probability of winning a further prize based on a criteria such as average credits awarded to players would have been both well-known and obvious design choice according to a game designer's preference.

Claim 4: Vancura discloses determining the probability of success so that the average number of credits won in respect of the game after completion of the determination of the probability of success is approximately the same as the number of credits won before the completion of the determination of the probability of success (col. 3, lines 29-49; col. 4, lines 46-49).

Claim 5: Vancura discloses that the player risks losing at least a portion of the already won prize if any subsequent outcome is unsuccessful (col. 6, lines 45-48).

Claim 6: since Vancura discloses providing for an expected return on the overall game within a predetermined limit (col. 5, lines 6-7 and 54-55), Vancura obviously discloses determining the probability of success of winning any further prizes based on the total prize the player has won.

Claim 7: Vancura discloses including a plurality of pathways and the player is able to choose one of the pathways as an initial step in playing the game (Fig. 6; col. 3, lines 12-16; and col. 4, lines 9-10).

Claim 8: Vancura discloses switching from one pathway to another pathway (Fig. 1; col. 8, lines 9-12).

Claims 9-10: Vancura discloses each pathway has a predetermined number of steps (col. 4, lines 43-49).

Claims 11-12: Vancura discloses applying a numerical constant to each step in each pathway in determining the probability of successfully completing that step in the pathway if selected by the player, the numerical constant being related to an average prize won up to that point in the game (col. 4, lines 36-49). Further, applying the same numerical constant to corresponding steps in each of the pathways would have been obvious design choice and requires only routine skill in the art.

Claim 13: Vancura discloses predetermining the numerical constants (col. 4, lines 36-37).

Claim 14: Vancura discloses determining the numerical constants such that the effect of a player switching pathways is obviated (col. 3, lines 46-49; col. 4, lines 36-42).

Claims 15-25: refer to discussion in claims 1-4, 6-11 and 13-14 above.

**Response to Arguments**

4. Applicant's arguments filed 4/9/07 have been fully considered but they are not persuasive.

In response to applicant's argument in page 10, second paragraph, through page 11, lines 1-6, regarding to Baerlocher reference, Baerlocher discloses that the

value of the prize at one position is determined by multiplying the player's bet by the bonus multiplier and if the bonus multipliers increment linearly, then the probability of advancement decreases linearly (col. 8, lines 18-21). In particular, in Fig. 3, the player begins at an initial position (position 9) with an initial prize value is one multiplied by the player's bet. To obtain a further prize value (2x player's bet) which is *higher than the initial prize value* (1x player's bet), the player have to make a correct choice to advance to the next position (position 8), the probability of making the correct choice to advance to the next position (position 8) decreases to 95%, because the initial prize value at position 9 is lower than the further prize value at position 8 . Baerlocher clearly teaches using the value of the initial prize or previous prize value to determine the probability of achieving a subsequent prize.

In response to applicant's argument in page 11, first paragraph, through page 12, lines 1-2, Vancura does not using the value of a previously prize to determine the probability of achieving a subsequent prize. However, Baerlocher teaches the claimed limitation.

In response to applicant's argument in page 12, first paragraph, regarding to claim 8, Vancura teaches there are plurality of pathways 12 (Fig. 1) and plurality of intersection nodes 14 on each pathway (Fig. 1), at each intersection node 14, the player chooses to switch from one pathway to another pathway (col. 8, lines 9-12; and col. 7, lines 25-27).

Applicant's argument on claims 26 and 33-34 is moot, because claims 26 and 33-34 are withdrawn from consideration as being directed to a non-elected invention.

5. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action. Any response to this final action should be mailed to:

Box AF:

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

Or faxed to:

(571) 273-8300, (for formal communications; please mark  
"EXPEDITED PROCEDURE").

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim T. Nguyen whose telephone number is (571) 272-4441. The examiner can normally be reached on Monday-Thursday from 8:30AM to 5:00PM ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai, can be reached on (571) 272-7147. The central official fax number is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Date: June 21, 2007

  
Kim T. Nguyen  
Primary Examiner  
Art Unit 3714